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Anna Marie Young
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CEQA.GHG@opr.ca.gov

Dear Ms. Young:

I am writing to express my support for the Office of Planning and Research's "Preliminary Draft CEQA Guideline Amendments for Green House Gas Emissions" released on January 8, 2009, and to offer suggestions for further improvements.

**Background**

Nelson\Nygaard is a nationwide transportation planning firm based in San Francisco, with a focus on transit, multimodal transportation planning, Transit Oriented Development and infill development. Since our firm was founded in 1987, we have conducted the transportation analysis of many dozens of EIRs throughout California.

**Problems with the Current CEQA Transportation Approach**

As you know, the words "traffic," "congestion" or "parking" appear nowhere in the CEQA legislation. The transportation analysis requirements arise largely from Appendix G of the Environmental Guidelines issued administratively by OPR, and have been shaped by a wide variety of court cases. The current guidelines have the advantage of offering lead agencies considerable flexibility in determining what is a "significant" transportation impact, along with flexibility in determining the appropriate methodology to use in calculating impacts.

Because CEQA is essentially a legal disclosure tool, the courts have tended to interpret transportation analyses conservatively, typically considering "worst case scenario" impacts rather than likely impacts. More importantly, they have tended to ignore the different travel characteristics of TODs, and the trip reduction effects of TDM programs, unless there is a preponderance of local data to support different conclusions. Lead agencies have been reluctant to deviate from conventional practice either because of the costs of collecting local data or, more commonly, the time and expense of the inevitable lawsuits that result from changes to conventional practice.

The consequences of this "conservative" approach are significant:

- **Vehicle trips are overestimated.** Typically, CEQA analyses require planners to assume vehicle trip generation rates at TODs are the same as in auto-dependent development. Lead agencies often use the ITE *Trip Generation* manual for estimating trips for all development contexts. As noted in the *Trip Generation* users' manual, however, the data therein was collected largely at isolated, single-use locations, lacking in transit or pedestrian accommodations. While the users' manual advises that trip rates be adjusted for mixed use and transit oriented development, no guidance is provided on how to make such adjustments. As noted in many studies, most recently in *TCRP 128: Effects of TOD on Housing, Parking and Travel* (Cervero, Arrington, 2008), TODs typically generate half the vehicle trips that would be predicted by the ITE manual.

- **Only local congestion is examined.** EIRs typically consider traffic congestion in the immediate vicinity of the project, not downstream effects or effects on the regional transportation network.

- **Transportation impacts to cars are emphasized while impacts to people, transit, bicyclists and other modes are ignored.** For example, a Bus Rapid Transit or bicycle lane project that reduces vehicle capacity is typically assumed to have negative transportation impacts because it reduces capacity for cars, while the net benefits for the movement of people are ignored.

- **"Last project in" faces disproportionate burden.** While a long history of developments may have contributed to a localized traffic congestion problem, only the project that trips Level of Service across an arbitrary threshold is deemed to have a "significant impact." Projects that stay just under the threshold are not required to contribute anything towards mitigation.

- **Mitigations worsen the problem.** Most importantly, projects are given limited opportunities to mitigate significant negative traffic impacts, specifically:

    - **Widen roads.** When roads are widened, however, streets are typically made more hostile to pedestrians, bicyclists and transit due to increased vehicle speeds and pedestrian crossing distances. When vehicle trip generation is overestimated, roads are widened to a greater degree than appropriate, resulting in excess vehicle capacity that in turn induces increased vehicle demand. The mitigation then exacerbates the problem it was intended to solve.

    - **Reduce density.** Reducing the density of a project may reduce the total number of local vehicle trips, but at the same time it typically increases the total vehicle trip *rate*. Over time, this results in two effects: 1) Development is spread out, resulting in higher vehicle miles traveled and a greater spread of congestion and 2) Per capita vehicle miles traveled are also increased, resulting in greater overall levels of traffic, as well as air quality implications.

- **Move the project to a more isolated location.** Because CEQA focuses on local impacts rather than regional impacts, moving the project to a more isolated greenfield location produces fewer negative traffic impacts under CEQA than an infill project in a location that already has some traffic. Again, this results in worsened regional traffic and air quality implications.

- **Implement Transportation Demand Management.** TDM programs are an option for reducing traffic impacts, yet the courts and lead agencies have historically been suspicious of such measures: How will we know for certain if they will work? What happens if there is an exceedance? As a result, despite the abundant data on the trip reduction effects of TDM, even the most effective TDM programs are often ignored or awarded only minor discounts from the auto trip rate.

Taken together, these problems tend to make it easier to build low-density, auto-dependent projects at the urban edge, and more difficult to do pedestrian-oriented infill projects near transit. In other words, compliance with CEQA's current transportation analysis conventions has tended to result in greater per capita Vehicle Miles Traveled, greater regional congestion, worsened air quality and increased $CO_2$ emissions in California.

**Solving the Problem**

Recognizing a contradiction between the State's past practice in transportation analysis under CEQA and new requirements to analyze and reduce $CO_2$ emission, OPR has issued proposed changes to the CEQA Guidelines. In general, these changes will help CEQA become a better tool not only for reducing $CO_2$ emissions, but also for reducing regional traffic impacts and improving our economic sustainability. I would like to discuss a few of the most notable changes and suggest opportunities for further refinement:

**1) 15093. Statement of Overriding Considerations**

The addition of section (d), specifically allowing consideration of regional and statewide impacts, would have been helpful if the underlying problems of the transportation analysis guidelines had not been resolved in your edits to Appendix G. T

**2) 15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.**

For most development projects, $CO_2$ emissions from vehicle trip generation exceed emissions from direct energy consumption. Therefore, it is important to specify that projects must account for indirect emissions that result from people driving to the project, and to implement not only physical but also programmatic measures to mitigate these impacts, including Transportation Demand Management programs. Specifically we recommend the following additions to and deletions from the text:

(c) Mitigation Measures Related to Greenhouse Gas Emissions

(1) Lead agencies should consider all feasible means of mitigating greenhouse gas emissions including but not limited to direct or indirect emissions associated with the project's vehicle trip generation and energy consumption, including fossil fuel consumption.

(2) Mitigation measures may include project features, project design, transit improvements, increased density, mix of uses, parking charges, Transportation Demand Management programs or other physical or programmatic measures ~~which~~ that are incorporated into the project to substantially reduce direct or indirect energy consumption or greenhouse gas emissions. Mitigation measures should prioritize a per capita reduction in emissions over a total reduction in emissions.

Specific support for *per capita* emissions reductions is important so that applicants do not merely reduce the project's size or, worse yet, build several smaller projects while ignoring cumulative impacts.

**3) 15183. Projects Consistent with a Community Plan or Zoning**

Please strike (g) (1), "Parking ordinances" in keeping with the changes to Section XVI of Appendix G, below.

Under (g) (8), consider adding "Sustainable Community Strategy."

**5) Appendix G VII, Greenhouse Gas Emissions**

Under (b), consider specifying "Sustainable Communities Strategy."

**6) Appendix G XVI. Transportation/Traffic**

The proposed text reads: "Would the project: Result in a substantial increase in the number of vehicle trips, roadway vehicle volume or vehicle miles traveled?"

This is a substantial improvement over the current text. Specifically:

1) It seems to allow agencies to submit a negative declaration for project that do not generate vehicle trips but may reallocate roadway space, such as Bus Rapid Transit, bicycle lane and sidewalk widening projects.

2) It seems to exclude small infill and Transit Oriented Development projects that would not generate a "substantial" increase in trips, regardless of how congested the surroundings are.

3) To mitigate a substantial number of vehicle trips, a project applicant could no longer widen roadways, which would be counterproductive to the goal of reducing trips.

On the other hand, this wording presents certain disadvantages as well:

1) Because any project that produces a "substantial" number of vehicle trips is assumed to have a potentially significant impact, a large transit-oriented project could be considered impactful due solely to its size. This may be fine, provided mitigations focus not on reducing the project size, but reducing the vehicle trip *rate*.

2) Projects that produce a less-than-substantial number of vehicle trips are assumed to have no transportation impact. Therefore, auto-dependent projects may require no mitigation provided only that they are small.

While the proposed wording appears to allow local jurisdictions to seek certain traffic mitigations from larger projects, a traffic impact fee would be a more efficient and effective tool than the CEQA process.

A way of addressing the above problems may be to replace this question with one or more that focus not on total vehicle trips, but on average per capital vehicle trips. Selecting the optimal wording, however, presents challenges:

- The wording should allow the best projects to avoid the expense and time of a detailed CEQA transportation/VMT analysis, particularly dense infill and Transit Oriented Development projects that already face greater regulatory scrutiny and financing challenges compared to sprawl. SB 375's CEQA exemptions are so restrictive as to cover a very small percentage of good projects, excluding many projects whose per capita VMT is 50% below average.
- The wording should pressure all projects to reduce their per capita VMT to the lowest level reasonable, recognizing that greater VMT reduction is possible in denser urban areas than elsewhere.
- The wording should not place an unfair burden on rural development, but it should recognize that main-street-oriented small towns in California enjoy similar VMT reduction as urban places.

A possible approach may be to substitute the "substantial increase" question with the following:

- Would the project result in an increase in VMT per household or per capita that is the lower of either:
    - 14,000 VMT per year per household, or
    - 70% of the per household or per capita average VMT for the local jurisdiction?

- Is the project consistent with a plan adopted by an applicable state or regional agency, county, municipality or air district, or a mayor's or governor's executive order, to reduce Vehicle Miles Traveled or Greenhouse Gas Emissions?

Such wording has the following advantages:

- By focusing on *per capita* vehicle trips rather than total vehicle trips, we can single out all projects that put a disproportionate burden on our regional transportation systems and air quality, not just the large projects.

- By looking at average trip generation in the surrounding community, we do not put an unfair bias toward urban sites and against all rural and suburban sites. Rather, the question asks whether the project does better or worse than would be expected for the surrounding context.

- By setting thresholds at 14,000 VMT per year per household and/or a 30% reduction of average per capita VMT, we respect the current staff work at CARB and analysis by John Holztclaw, Reid Ewing (*Growing Cooler*., ULI Press, 2008) and others that suggests these targets are readily achievable and necessary for meeting the State's overall Greenhouse Gas Reduction goals.

**Appendix G XVI. Transportation/Traffic**

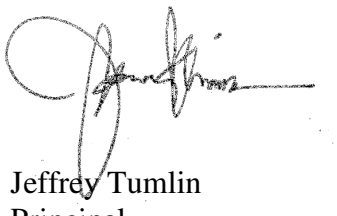
Finally, OPR proposes to strike consideration of parking capacity as a potential environmental impact. This is a most welcome change. As authors such as Don Shoup and Todd Litman have demonstrated, mandating excessive parking simply results in parking being underpriced, which in turn results in excessive rates of driving, which in turn results in congestion and air quality impacts. The courts have already determined that parking scarcity is a "social impact" and not an environmental impact.[1] We are grateful this line is finally being struck.

**Summary**

OPR's proposed changes to the CEQA Guidelines represent significant improvements. Most importantly, they remove a direct contradiction between past practice around CEQA's transportation analysis conventions and the new necessity to reduce Greenhouse Gas emissions. The changes recommended above would help further fulfill the intent of CEQA, allowing it to promote the most sustainable range of projects in California and require effective mitigations for those projects that do not meet the State's sustainability goals.

Please do not hesitate to contact me if you have any further questions.

Sincerely yours



Jeffrey Tumlin
Principal

[1] San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (Forest City Development, Inc.) (2002) 102 Cal.App.4th 656, Cal.Rptr.2d.